

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ROBERTO DURAND,

v.

Plaintiff.

NV ACLU,

Defendant.

Case No. 3:21-cv-00348-MMD-WGC

ORDER

11 Pro se Plaintiff Roberto Durand filed a civil rights complaint under 42 U.S.C. §
12 1983. (ECF No. 1-1.) Before the Court is the Report and Recommendation (“R&R” or
13 “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF No. 3),
14 recommending that Durand’s application to proceed *in forma pauperis* (“IFP”) be granted
15 and that his complaint be dismissed with prejudice. Durand had until August 31, 2021, to
16 file an objection. To date, no objection to the R&R has been filed. For this reason, and as
17 explained below, the Court adopts Judge Cobb’s R&R and will grant Durand’s IFP
18 application and dismiss his complaint with prejudice.

19 The Court “may accept, reject, or modify, in whole or in part, the findings or
20 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
21 fails to object to a magistrate judge’s recommendation, the Court is not required to
22 conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas*
23 *v. Arn*, 474 U.S. 140, 149 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114,
24 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and
25 recommendations is required if, but *only* if, one or both parties file objections to the
26 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory
27 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no
28 clear error on the face of the record in order to accept the recommendation.”).

Because there is no objection, the Court need not conduct *de novo* review, and is satisfied Judge Cobb did not clearly err. Here, Judge Cobb recommends that Durand's IFP application be granted because his account statement indicates an average monthly balance for the past six months of \$1.43, and his average monthly deposits were \$0.00. (ECF No. 3 at 2.) Additionally, Judge Cobb recommends that Durand's complaint be dismissed with prejudice as Defendant Nevada ACLU is a private organization and not a state actor, thus not subject to suit under § 1983. (*Id.* at 5.) The Court agrees with Judge Cobb. Having reviewed the R&R and the record in this case, the Court will adopt the R&R in full.

It is therefore ordered that Judge Cobb's Report and Recommendation (ECF No. 3) is accepted and adopted in full.

It is further ordered that Plaintiff Roberto Durand's application to proceed *in forma pauperis* (ECF No. 1) is granted. Durand is not required to pay the initial partial filing fee. However, whenever Durand's prison account exceeds \$10.00, he is required to make monthly payments in the amount of 20% of the preceding month's income credited to his account until the full \$350.00 filing fee is paid. This is required even if the action is dismissed or is otherwise unsuccessful.

The Clerk of Court is directed to send a copy of this order to the attention of the
Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box 7011,
Carson City, Nevada 89702.

The Clerk of Court is directed to file Durand's complaint (ECF No. 1-1).

If is further ordered that Durand's complaint (ECF No. 1-1) is dismissed with prejudice.

The Clerk of Court is directed to enter judgment accordingly and to close this case.

DATED THIS 3rd Day of September 2021.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE